IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9206 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USHABEN D/O TATYABHAI MADHUBHADABEKAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9206 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Vadodara city on 14.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). He was declared as "bootlegger".

The grounds placed on record and as served upon the petitioner reveal that the detaining authority took into consideration three offences registered against the petitioner on 25.1.2002, 12.1.2003 and 28.4.2003 under sec. 66(B) and 65A of the Bombay Prohibition Act whereby 60 litres, 18 litres and 38 litres of country liquor was seized by the police from the petitioner, in addition to this, the detaining authority also relied upon the two in-camera statements of the witnesses as recorded by the sponsoring authority on 2.5.2003 and verified by the detaining authority on 13.5.2003 revealing the incidents of 25.4.2003 and 1.5.2003. From the above material, the order impugned came to be passed by the detaining authority.

Heard ld. Advocate Mr. Kamen Shukla for Ms. Banna Datta for the petitioner and Ms. Panchal ld. AGP for the respondents. The affidavit in reply as filed by the detaining authority and placed on record, is also taken into consideration.

Out of various contentions urged on behalf of the petitioner and controverted by ld. AGP, this matter can be disposed of on the ground whether the objectional activities of the petitioner could be said to be prejudicial to the maintenance of public order. On going through the record and the grounds served, it clearly appears that the three offences under the Bombay Prohibition Act registered against the petitioner could hardly be said to be objectional activities affecting the public order whereby the quantity of 60 litres, 18 litres and 38 litres of country liquor as alleged to have been seized from the petitioner. From two in-camera statements, it is revealed that on 25.3.2003 when witness was passing through a temple and advise the petitioner not to sale the country liquor nearby the temple, the petitioner was furious and had beaten the witness. The petitioner created the terror and fear in the area and the crowd which was gathered also disbursed. While in the incidents occurred on 1.5.2003, the witness has stated that on suspicion that the witness was informing the police about the objectional activities of the petitioner, a witness was beaten by the petitioner. The petitioner created terror and fear in the locality and

the crowd which was gathered around was disbursed on account of fear and terror of the petitioner. Considering the statements, it is clear that these are the disputes picked up by the petitioner and could be taken care of by maintaining law and order. These are not the activities which can be labelled as prejudicial to the maintenance of the public order. There is no material on record to denote that due to objectional activities as alleged large section of the society was affected or even the tempo of life in certain locality was affected. What is revealed from the material is individual disputes and the fact that three crimes came to be registered against the petitioner. Therefore, from the record, it is clear that there was no material before the detaining authority to reach to the subjective satisfaction that due to objectional activities of the petitioner as alleged, the public order was affected. In this view of the matter, the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 14.5.2003 by the Police Commissioner, Vadodara city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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